

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2073 of 1999

with

SPECIAL CIVIL APPLICATION No 2314 of 1999

with

SPECIAL CIVIL APPLICATION No 2337 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

KANAIYALAL UDEYSHANKER JOSHI

Versus

STATE OF GUJARAT

Appearance:

MR YN OZA for Petitioner

MR SP HASURKAR for Respondent Nos.1,2,3,4,5

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 11/05/1999

ORAL JUDGEMENT

#. As in all these special civil applications the same facts and grounds involve as well as the counsel for the petitioners is also one, I consider it to be appropriate to take up these matters for hearing altogether and are being deciding by the common order. For the decision of these three matters the facts are taken from special civil application No.2072 of 1999. The petitioner joined the police service as constable in the year 1966. He was promoted as Head Constable in the year 1970. In the year 1972 the petitioner had undergone refresher course meant for Head Constable and successfully completed the same. In the year 1977 the petitioner was promoted as First Grade Head Constable. It is the grievance of the petitioner that during the period from 1978-82 he was eligible to compete for promotion to the post of Police Sub Inspector. During this period he used to invariably appear in the written tests and used to pass therein invariably and whereafter he used to appear for personal interview but could not be selected due to subjective evaluation of the performance of the petitioner in the interview. In the year 1982-83 the petitioner appeared in the written test for promotion to the post of Police Sub Inspector wherein he obtained more than 60% marks in aggregate. It is the say of the petitioner that he came to know that those Police Head Constables (Grade-I), who obtained 50% and above marks in written test need not to appear for interview before the interview board and they can directly sent for the training at Police Training School at Junagadh. However, the petitioner, as per his case, was asked to appear in the interview though his aggregated marks in written test were more than 60%. Having aggrieved of that action of the respondents, in the year 1987 the petitioner along with the other similarly situated persons filed special civil application before this court. In the special civil application aforestated the interim order was granted by this court and the petitioner was permitted to join the training programme at P.T.S. at Junagadh. He passed the requisite examination and test at the end of the training programme. It is the grievance of the petitioner that having regard all these facts, he ought to have been promoted as P.S.I. long back but for the reasons best known to the respondents he was not promoted. The special civil application filed by the petitioner was came to be decided on 11/11/89 and the same has been allowed. Against that judgment the respondent had filed Letters Patent Appeal in Division Bench. The Letters Patent Appeal is pending in the court. It is not in dispute that the State of Gujarat prayed for grant of stay of the order of the learned single judge in the special civil application. The Letters Patent Appeal

court has declined to grant interim relief in the appeal. In June, 1997 the petitioner was promoted on ad-hoc basis as P.S.I. After this promotion the petitioner made the representation to the Hon'ble Minister for the Home Department for regularization of his promotion. Instead of regularizing his promotion it is contended that the petitioner was reverted from the post of P.S.I. In July, 1998 the respondent again promoted the petitioner to the post of P.S.I. on ad-hoc and temporary basis for one year. Under the order dated 15/3/99 the respondents have taken decision to revert the petitioner. Hence this special civil application before this court.

#. The learned counsel for the petitioner contended that the respondents are giving ad-hoc and temporary appointment to the petitioner from time to time though he passed the requisite examination for promotion as P.S.I. He also undergone the process of the interview and training at P.T.S. Junagadh. Hence he should have been given the regular promotion. However, as L.P.A. is pending against the judgment of the learned single judge, the learned counsel for the petitioner submits that it is understandable that the respondents are giving ad-hoc and temporary promotion to the petitioner but they are giving break in the promotion for the reasons best known to them. Earlier also, he was given promotion but after giving the break again he was given the promotion and again this time he has been reverted. Lastly, it is contended that the respondents are acting contrary to the decision of learned single judge given in the case of the petitioner wherein it has been laid down that those candidates who secured 30 or above marks in the interview are taken to be cleared in the interview and as the petitioner has secured more than 30 marks in the interview he should have been given regular promotion or even if it is taken to be ad-hoc or temporary promotion for the reasons that L.P.A. is pending it should have been continued.

#. The respondents submitted the reply to the special civil application and opposed the same. The learned counsel for the respondents does not dispute that this court has given decision in favour of the petitioner in the earlier special civil application. It is decided that 150 marks fixed for the interview should have been taken only 60 marks and those candidates who got 30 or above marks in interview should have been taken to have cleared the interview. The L.P.A. has been filed against the judgment but the judgment is not stayed. No selected candidate is made available to replace the petitioner.

#. The learned counsel for the respondent states that the petitioner has not secured more than 30 marks in the interview. However, the learned counsel for the respondent submitted that those marks are not available in the department. The learned counsel for the petitioner submits that the petitioners secured more than 30 in the interview, which is clearly borne out from the fact that they have been given promotion from time to time to the post of P.S.I. The respondents have withhold from this court the relevant material i.e. marks which has been obtained by the petitioner in the interview and for nonproduction of this material documents an adverse inference deserves to be drawn against them. So, it is taken as accepted that all the petitioners have got 30 or above marks in the interview which has been held for the promotion to the post of PSI.

#. It is no more in dispute that the petitioners have cleared the qualifying examination prescribed for promotion of PSI and they have also undergone the prescribed training at P.T.S., Junagadh. So, the petitioners are to be taken to be selected candidates on the merit list of the candidates for promotion to the post of P.S.I. The learned counsel for the petitioners is correct to contend that the respondents are deliberately not continuing the petitioner on the post of P.S.I. and after giving some break the promotion is made. I do not find any substance in the contention of the learned counsel for the respondents that the promotion of the petitioners is only ad-hoc and temporary with the clear condition that this is not conferred upon the petitioner any right to continue on the post. It is not the word which used in the order is material but if the petitioners are duly qualified for promotion then giving them only ad-hoc promotion by the respondents is highly arbitrary and unjustified. There are two ways to deal with a such case. The promotion which has to be given to such candidates may be made subject to the decision of the L.P.A. or it could have been done as what it has been done in the present case to treat it to be a temporary or ad-hoc promotion and to continue till the decision of L.P.A. It is really shocking that the respondents are not making efforts to see that the L.P.A. of the year 1998 is decided expeditiously. However, in the facts of this case, on which there is no dispute this reversion of the petitioners is wholly arbitrary and unjustified. The respondents have not given out any reasons for the reversion of the petitioners. They failed to give out any ground in support of the contention that for the administration reasons this

reversion has been ordered. When the petitioners have successfully undergone the qualified examination for promotion both written and interview and also undergone the training, they have to be taken as selected candidates and once they have been given promotion they should have been continued to hold the post till the decision of the L.P.A. They got the promotion after more than 7 years of passing of their qualifying examination for promotion, interview and undergoing the training it should have been continued unless the reversion is necessitated because of some cogent and justified reasons and ground. In this case despite of the grant of sufficient time to respondents to enable them to give out any justification for the reversion of the petitioners from the post of P.S.I to Head Constable they utterly failed to do so.

In the result, all the special civil applications are allowed and the action of the respondents to revert the petitioners from the post of the P.S.I. to Head Constable, Grade-I is declared to be illegal and as a consequence thereof the reversion order of the petitioners are quashed and set aside. The petitioners are entitled for all the consequential benefits. The respondents are directed to reinstate the petitioners forthwith on the post of P.S.I. The respondents further directed to continue the petitioners on the post of P.S.I. till the L.P.A. is decided and where if the judgment goes against them or by way of penalty on proved misconduct has to be given to the petitioners.

Rule is made absolute in the aforesaid terms. The respondents are directed to pay Rs.2,000/- to each of the petitioners as costs of these litigations.

(S.K.Keshote, J.)

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